

SUMMARY OF THE HIGHLIGHTS OF ADU CHANGES

Special provisions are included when a home is purchased through the First-Time Homebuyers Program (also known as the Affordable Dwelling Unit Program). For an Affordable Dwelling Unit (ADU) sold (new units or resales) on or after July 2, 2002, the Declaration of Affordable Dwelling Unit Covenants recorded in the land records for your home and the new provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance, as amended, require the following, among other things:

- a. If the owner offers the home for sale, it must first be offered exclusively to First-Time Homebuyers Program applicants for sixty (60) days.
- b. The home may be resold anytime during the control period. For ADU's first sold after March 31, 1998, the control period is for fifteen (15) years from the date of the initial sale. ADU's first sold earlier initially had a fifty (50) year control period, which at the election of the current owner may have been reduced to the fifteen 15 year control period and can still be reduced to the fifteen (15) year control period at any time. The amount of the sales price cannot exceed the original purchase price, plus annual increases in the Consumer Price Index (CPI) during the period the home is owned. However, sales prices may be adjusted for certain types of improvements made to the home by the owner, such as finishing a basement or adding a deck or bathroom. The owner should consult the Department of Housing and Community Development for details. At the first sale that occurs after the control period when price is no longer controlled, the unit can be sold for market price; however at closing, the excess amount realized through the sale over the applicable adjusted home price is evenly divided between the owner (seller) and the Fairfax County Housing Trust Fund.
- c. The home must be occupied by the purchaser(s) as their primary residence. The home cannot be rented. Each year the purchasers must sign, have notarized, and deliver to the Fairfax County Redevelopment and Housing Authority (FCRHA) a Certification of Occupancy.
- d. The home is subject to the provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance, as amended from time to time. Those provisions were amended effective July 2, 2002. The new provisions affecting the ADU covenants shall apply to units initially sold and resales of existing units after July 2, 2002 and the applicable covenants shall be deemed to incorporate such provisions, whether or not expressly set forth in the recorded covenants. New provisions include, but are not limited to, the following:
 - ***New Provision: One Covenant*** – A Declaration of ADU Covenants will be recorded with the subdivision plat or condominium declaration for new developments that file on or after July 2, 2002. There will no longer be an individual unit Declaration of ADU Covenants recorded at the time of an individual new unit sale or resale of an existing ADU unit. The deed to the unit

- will refer to the applicable Declaration of ADU Covenants and provisions as amended by the Fairfax County Zoning Ordinance.
- ***New Provision: Limits on Secured Financing*** – The amount of indebtedness that the owner may secure by an interest in the ADU is limited only to that ADU's control price, as provided for by the ADU Program and established by the Fairfax County Department of Housing and Community Development. Any indebtedness beyond the control price is not secured by any interest in the ADU.
- ***New Provision: Times for Notice of Default, Right to Cure, and Notice of Foreclosure, and the Addition of Right to Acquire*** – The lender must give a notice of default to the County Executive and the Fairfax County Redevelopment and Housing Authority (FCRHA) and notice of pending foreclosure. The FCRHA will have 90 days to cure the default (Right to Cure) and/or 90 days to exercise the right to acquire (Right to Acquire) the unit upon which foreclosure is pending. These notices can run simultaneously. The acquisition of the ADU by the FCRHA can be prior to or at the foreclosure sale. The FCRHA's Right to Acquire the ADU is for a price not to exceed the control price and reasonable and customary costs and expenses (Outstanding First Trust Debt). If the FCRHA elects not to exercise its Right to Acquire, a non-profit organization designated by the County Executive may elect to acquire the ADU being foreclosed upon for a price not to exceed the Outstanding First Trust Debt.
- ***New Provision: Eligible Lender*** – Only a foreclosure sale by an Eligible Lender, as defined below, after it has given the Right to Cure and the Right to Acquire noted above will cause the ADU covenants to be released. An Eligible Lender is an institutional lender holding a first priority purchase money deed of trust on an individual ADU or a refinancing of an institutionally financed purchase money deed of trust by an institutional lender provided that such refinancing does not exceed the outstanding principal balance of the existing purchase money first trust indebtedness on the unit at the time of refinancing.
- ***New Provision: Division of Foreclosure Proceeds*** – If the ADU in foreclosure proceedings is not acquired by the FCRHA, or by the County Executive's designated non-profit organization, and is sold at foreclosure, then one-half (1/2) of the sales proceeds over the amount of the Outstanding First Trust Debt is required to be paid to the Fairfax County Housing Trust Fund.